Ramu Vs. District and Sessions Judge, Kolar and ors.

Ramu Vs. District and Sessions Judge, Kolar and ors.

SooperKanoon Citation : sooperkanoon.com/373798

Court : Karnataka

Decided On : Dec-13-1988

Reported in : ILR1989KAR3191

Judge : H.G. Balakrishna, J.

Acts : Army Act - Sections 41(2)

Appeal No. : W.P. No. 4969/1987

Appellant : Ramu

Respondent : District and Sessions Judge, Kolar and ors.

Judgement :
ORDER

1. The situation in this case is such as to place any decision making authority on the horns of dilemma. On the one hand consistency in the callousness of the petitioner to the call of duty and on the other the pressure of equity and sympathy for the irreparable loss the petitioner would suffer along with the members of his family, if the impugned order is confirmed. The task is rendered rather difficult and unenviable in striking a balance between the two. On a very careful consideration of all aspects, both human and disciplinary, I am of the view that a lesser punishment than what has been awarded would meet the ends of proportionality.

2. Ramu was appointed as a peon in 1979 in the office of the Munsiff, Kolar. By his irresponsible conduct of remaining unauthorisedly absent, he provoked disciplinary proceedings against him. From 20th November 1979 to 7th December 1979, he remained absent without authorisation from duty and after disciplinary proceedings, he was administered a warning. The second instance was that he remained similarly absent from 23rd August 1982 to 18th December 1982 necessitating an enquiry into his dereliction of duty, which resulted in a penalty of withholding two increments with cumulative effect. Finally one more enquiry which was a sequel to his absence from duty without authorisation from 21st March 1985 and this resulted with the consequence of removal from service on 5th January 1987. The petitioner has questioned the impugned order of dismissal dated 5th January 1987 in this writ petition.

3. No discrepancy or irregularity is noticeable in the conduct of the enquiry and the entire disciplinary proceedings. The petitioner has rendered himself culpable on account of his own conduct inconsistent with the requirement of disciplined conduct of a government servant.

4. What survives for consideration is the short point and that is whether the punishment meted out to the petitioner is too harsh and therefore is not consistent with the principle of proportionality.

5. The learned Government Pleader submitted that instruction was sought from the authorities in order to find out whether the authorities would be willing for a lesser punishment than what has been imposed on the petitioner. However she drew blank on account of the firm opinion of the authorities that this is not a case in which the authorities should relent in view of the lapses committed by the petitioner in remaining absent without authorisation on three specific occasions for long periods. The Government Pleader also submitted that the petitioner does not deserve, in the circumstances of the case, any lesser punishment than what has been inflicted upon him.

6. A principle of far reaching consequence has been laid down in Ranjit Thakur v. Union of India by the Supreme Court (1988-I-LLJ-256), in which the Court was of the opinion that the punishment was so strikingly disproportionate as to call for and

justify interference. It would be necessary to reproduce the relevant portion of the judgment in para 3 of the aforesaid decision

'The accused No. 1429055 M. Signalman Ranjit Thakur of4 Corps' Operating Signal Regiment is chargedwith - Disobeying a lawful command given by his superiorArmy Act office. In that he at 15.30 hrs. on 29th March 1985 whenSection ordered by JC 106251P Sub Ram Singh, the Orderly Officer41(2) of the same Regiment, to eat his food did not do so.'

The result of refusal to eat his own food costing the job, the Supreme Court thought, was a punishment strikingly disproportionate and called for interference. An excerpt from the judgment would bear out the principle to be followed by the decision making authority (p.262) -

'Judicial review, generally speaking, is not directed against a decision, but is directed against the 'decision making process'. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Material. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. (1984) 3 WLR 1174 (HL) and (1983-II-LLJ-1) Followed.'

7. Applying the principle to the facts of this case, though it may not be possible to reach the conclusion that the decision impugned in this case is either an outrageous defiance of logic or suffers from irrationality and perversity, I am still of the opinion that assessing the disastrous consequence resulting from infliction of maximum punishment on the petitioner in a case of remissness of not reporting for duty and remaining away from the office of calling without the necessary permission or authorisation, the punishment is in a sense disproportionate to the gravity of the offence committed by the petitioner. The degree of seriousness and

the measure of the gravity of the offence cannot be standardised. But they have to be assessed in relation to the peculiarities of each case and the peculiarities vary from one situation to another depending once again on the various factors which influence the creation of situations.

8. Though the explanation offered by the petitioner in this case does not bear legal scrutiny, it cannot be lost sight of that the petitioner in all the three disciplinary proceedings remained ex parte in keeping with the cursed habit of remaining away from duty without authorisation. The mental attitude of the petitioner does not reflect the attitude of an ordinary, reasonable and prudent person. If the principle that every one is presumed to be aware of the ordinary, natural and probable consequences of his conduct is to be applied to the instant case, it is difficult to find an answer from the petitioner. This peculiar mental attitude of the petitioner alone creates a doubt in the mind of the Court as to what actually operated on the mind of the petitioner in keeping away from work without permission. Though it would be risky to delve into the psychology of a person and as observed by Brian C.J., 'It is common knowledge that the thought of man shall not be tried, for, the devil himself knowledge not the thought of man.' The trite saying is that 'truth is a dangerous experiment and man is a bungling investigator.' However, it must be said that there is a degree of enigma in the behaviour of the petitioner on whom is placed the responsibility of supporting a family of five children and a long term of service ahead and if the petitioner had committed a graver offence than what he has done resulting in his dismissal, I would not have had any hesitation in refraining from taking a different view from what the authority has done in the instant case. It is not doubt true that in taking a decision in matter of this nature, which affects the future of an employee and his dependents to support, there is no place for misplaced sympathy or unregulated benevolence. However, in the instant case. I do not think that a reasonably lenient view by reducing the punishment would amount to either unregulated benevolence or misplaced sympathy. On the other hand, I am of the opinion that it would be possible to say that a lesser punishment would satisfy the requirements of the principle of proportionality and produce a salutary effect on the petitioner. The retribution of dismissal from service perhaps would require a graver offence than what has been proved against the petitioner in this case. The petitioner has no other ostensible source of

livelihood nor is it the intention of the disciplinary authority to deprive him of the source of livelihood once and for all in a climate of inevitable socio-economic conditions which permeates society to-day. It cannot be more aptly said than that 'Justice tempered with mercy is equity'. It cannot be said that the petitioner is guilty of a heinous offence or a gross tort or even moral turpitude as to warrant the maximum penalty of dismissal from service. The petitioner was produced before the Court by the learned Counsel for the petitioner. The petitioner was remorseful and vowed to avoid recurrence of his accursed habit of straying away from duty. He is in his thirties without any earning member in his family and all look to him for existence. In a situation like this, it is hard to reach pitiless conclusions despite remorseless logic. 'A heart buried in a dungeon is as precious as a heart seated on the throne' said Oliver Goldsmith. Petitioner being a marginal person belonging to Class IV service is craving before the Court for a lesser punishment which the discretion of this Court cannot mercilessly reject and for good reasons too. These are days when 'Reformative Theory' is gathering momentum in dealing with even delinquents facing capital punishments so as to reabsorb them into society for its benefit because the solution lay not in ending but in mending. I am therefore persuaded to opine that the petitioner deserves a lesser punishment than dismissal from service. Again I would like to impress that what I have done is only an assessment of the situation in so far as the circumstances of this case are concerned and I am averse to hazard a general proposition in this regard.

9. For the reasons stated above, I am of the opinion that the ends of justice would be met if the petitioner is subjected to the punishment of loss of back wages and withholding of two increments with cumulative effect and an order of reinstatement in service.

10. I, therefore, allow this writ petition and pass the following order -

The impugned order is quashed. I direct that the petitioner be reinstated without back wages and any consequential benefit and further subject to denial of two increments with cumulative effect.

11. The writ petition is disposed of accordingly.